IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

CRL.A.No. 1049 of 2001()

CC.819/2001 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR

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APPELLANT/COMPLAINANT:

UNIQUE ASSOCIATES, SREEPADAM ANNEX, THRISSUR, PARTNER, K.P.REGHUNAD, S/O.GOVINDAKURUPPU, FAROQUE,KOZHIKODE.

BY ADV. SRI.D.ANIL KUMAR

RESPONDENTS/RESPONDENTS:

1.STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2.SAFARUDEEN,SADIYA MARUTI SERVICE CENTRE, & IMPORTS CAR WORKS, TP 2/2Y2, PUTHANTHERU, MALAPPURAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.1049 OF 2001 (D)

Dated this the 7th day of March, 2007

JUDGMENT

Appellant filed a complaint under Section 138 of the Negotiable Instruments Act contending that cheque issued by the respondents was dishonored for insufficiency of funds". The learned Chief Judicial Magistrate took the sworn statement of the complainant on 27.4.2001. Thereafter it was adjourned to 30.4.2001. On 30.4.2001, following order was passed by the Chief Judicial Magistrate:

> "Complainant present, statement taken, Taken into file as S.T.667/01 made over to Judicial First Class Magistrate Court-III, call on 8.6.2001".

The case was transferred to the Judicial First Class Magistrate Court-III. Since there was another case, petitioner was not able to note that date and failed to appear before the Judicial First Class Magistrate on 8.6.2001. The summons was also not served on the accused. When the accused was not present,

presence of the complainant was not necessary. Even though under Section 256 (1) of the Code of Criminal Procedure, trial court can acquit an accused for absence of the complainant, it should not be done mechanically. The reason stated by the petitioner for his absence seems to be genuine. Since the notice served on the respondent was not returned and in the lower court also accused did not appear, fresh steps should be taken to serve notice on the accused. Complainant shall appear before the trial court on 2.4.2007. Accordingly trial court order is set aside and the appeal is allowed by way of remand.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.1049 OF 2001 (D)

JUDGMENT

7th March, 2007